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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

AIMEE LYNN JACOBY,

Defendant and Appellant.

F076240

(Super. Ct. Nos. CRF48801 &
CRF48689)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tuolumne County. James A. Boscoe, Judge.

Karriem Baker, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Caely E. Fallini, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Poochigian, Acting P.J., Meehan, J. and Snauffer, J.

Defendant Aimee Lynn Jacoby was convicted of various drug charges. On appeal, she contends several of her concurrent sentences should have been stayed pursuant to Penal Code section 654. The People concede and we agree. We will stay the terms.

FACTUAL AND PROCEDURAL SUMMARY¹

On December 5, 2015, defendant possessed and transported in her car a sunglasses case containing buprenorphine, methamphetamine, hydrocodone, and heroin. The drugs were packaged in a fashion that demonstrated they were possessed for sale and not for personal use. Defendant was out on bail or her own recognizance in case No. CRF48689.

On March 9, 2016, in case No. CRF48801, defendant was charged with transportation of buprenorphine for sale (Health & Saf. Code, § 11352, subd. (a);² count I), possession of buprenorphine for sale (§ 11351; count II), transportation of methamphetamine for sale (§ 11379, subd. (a); count III), possession of methamphetamine for sale (§ 11378; count IV), possession of hydrocodone for sale (§ 11351; count V), possession of heroin for sale (§ 11351; count VI), possession of methamphetamine (§ 11377, subd. (a), a misdemeanor; count VII), possession of hydrocodone (§ 11350, subd. (a), a misdemeanor; count VIII), possession of heroin (§ 11350, subd. (a), a misdemeanor; counts IX & X), possession of an injection/ingestion device (§ 11364.1, subd. (a)(1), a misdemeanor; count XI), and possession of quetiapine fumarate (Bus. & Prof. Code, § 4060, a misdemeanor; count XII). The information further alleged as to counts I through VI that defendant committed the offenses while she was released from custody on bail or her own recognizance in case No. CRF48689 (Pen. Code, § 12022.1).

¹ The background of case No. CRF48689 is not relevant to the issues raised here.

² All statutory references are to the Health and Safety Code unless otherwise noted.

On May 16, 2017, defendant pled guilty to all charges and admitted the on-bail allegation.

On July 24, 2017, the trial court sentenced defendant to four years four months in prison, consecutive to the sentences in case No. CRF48689 and another case, as follows: 16 months on count I, a concurrent term of three years on count II, a consecutive term of one year on count III, a concurrent term of two years on count IV, a consecutive term of one year on count V, a consecutive term of one year on count VI, a concurrent term of one year for counts VII through X, concurrent terms of six months for counts XI and XII, and a stayed term on the on-bail enhancement.

On August 17, 2017, defendant filed a notice of appeal.

DISCUSSION

The parties agree, as do we, that the trial court violated Penal Code section 654 when it imposed concurrent terms on counts II, IV, VII, VIII, IX, and X.

“[Penal Code s]ection 654, subdivision (a), provides in pertinent part: ‘An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.’ Section 654 bars multiple punishment for separate offenses arising out of a single occurrence when all of the offenses were incident to one objective. [Citation.] Whether section 654 applies is a question of fact for the trial court, and its finding will be upheld if there is substantial evidence to support the finding.” (*People v. Buchanan* (2016) 248 Cal.App.4th 603, 611 (*Buchanan*).) “Imposition of concurrent sentences is not the correct method of implementing section 654, because a concurrent sentence is still punishment. [Citations.] For this reason, the imposition of concurrent terms is treated as an implied finding that the defendant bore multiple intents or objectives, that is, as a rejection of the applicability of section 654.” (*People v. Alford* (2010) 180 Cal.App.4th 1463, 1468.)

“ ‘California courts have uniformly held that section 654 does not preclude multiple punishment for simultaneous possession of various narcotic drugs.’ ” (*Buchanan, supra*, 248 Cal.App.4th at p. 611.) In *People v. Monarrez* (1998) 66 Cal.App.4th 710, the court explained: “ ‘[I]t would be absurd to hold that a criminal who deals in one contraband substance can expand the scope of his [or her] inventory without facing additional consequences’ ” and “[a]lthough the overall intent is always to make money, the objectives of selling cocaine and heroin are separate.” (*Id.* at pp. 714-715.)

But “[w]hen police officers discover a defendant in an automobile in possession of a controlled substance, [Penal Code] section 654 applies to preclude separate punishments for the same act of transporting for sale the controlled substance and possessing it for sale. (*People v. Tinker* (2013) 212 Cal.App.4th 1502, 1506 [holding that section 654 applied to convictions for possession of heroin for sale and transportation of the same heroin for sale]; *People v. Avalos* (1996) 47 Cal.App.4th 1569, 1583 [same]; see *People v. Correa* (2012) 54 Cal.4th 331, 340, citing with approval *People v. Roberts* (1953) 40 Cal.2d 483, 491 [holding possession, sale, and attempt to transport heroin constitute only one act].)” (*Buchanan, supra*, 248 Cal.App.4th at p. 613.) *Buchanan* applies here.

I. Count II

The trial court erred in imposing separate sentences for defendant’s transportation of buprenorphine for sale (count I) and possession of buprenorphine for sale (count II). The term on count II must be stayed.

II. Counts IV and VII

The trial court erred in imposing separate sentences for defendant’s transportation of methamphetamine for sale (count III), possession of methamphetamine for sale (count IV), and possession of methamphetamine (count VII). The terms on counts IV and VII must be stayed.

III. Count VIII

The trial court erred in imposing separate sentences for defendant's possession of hydrocodone for sale (count V) and possession of hydrocodone (count VIII). The term on count VIII must be stayed.

IV. Counts IX and X

The trial court erred in imposing separate sentences for defendant's possession of heroin for sale (count VI), possession of heroin (count IX), and possession of heroin (count X). The terms on counts IX and X must be stayed.

DISPOSITION

The terms in counts II, IV, VII, VIII, IX, and X are stayed. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and minute order and forward certified copies to the appropriate authorities.